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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE:



Office: Dallas, Texas

Date: **OCT 21 2004**

IN RE: Applicant:



APPLICATION:

Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the Dallas District Office. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director in Dallas, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The district director concluded that the applicant failed to establish that he entered the United States before January 1, 1982 and resided in this country continuously in unlawful status through May 4, 1988. According to the district director the applicant had provided only "affidavits which are not verifiable, and no other type of documentation" to establish his presence in the United States during the applicable time period for LIFE legalization.

On appeal counsel asserts that the applicant has submitted numerous affidavit evidence of his continuous unlawful residence and employment in the United States from before January 1, 1982 through May 4, 1988, which meets the preponderance of the evidence standard applicable under the LIFE Act.

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("CSS"), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("LULAC"), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) ("Zambrano"). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10.

The record indicates that the applicant filed a timely claim for class membership in CSS in 1990.

An applicant for permanent resident status under section 1104 of the LIFE Act must also establish that he or she entered the United States before January 1, 1982 and resided in this country continuously in an unlawful status from before January 1, 1982 through May 4, 1988. See section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b).

8 C.F.R. § 245a.12(e) provides that "[a]n alien applying for adjustment of status under [section 1104 of the LIFE Act] has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite periods. . . . The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification." As explained in *Matter of E-M-*, 20 I & N Dec. 77, 80 (Comm. 1989), "when something is to be established by a preponderance of the evidence it is sufficient that the proof only establish that it is probably true." The decision went on to declare that, in the absence of contemporaneous documentation, affidavits are "relevant documents" which warrant consideration in legalization proceedings. *Id.* at 82-83. Preponderance of the evidence has also been defined as "evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1064 (5th ed. 1979).

When the applicant filed his claim for class membership in CSS with the Immigration and Naturalization Service (INS) in 1990 he indicated in his Form I-687, Application for Status as a Temporary Resident (Under Section 245A of the Immigration and Nationality Act), dated June 27, 1990, as well as on his undated Form for Determination of Class Membership in CSS *v. Meese*, that he first entered the United States without inspection at Eagle Pass, Texas in November 1981 and resided for the next seven years, until December 1988, at [REDACTED] in Dallas, Texas. In his I-687 form the applicant listed three places of employment in Dallas during the 1980s, including (1) Dootch Motors, [REDACTED] "cleaning cars" at \$4.00 an hour from February 1982 to November 1984, (2) [REDACTED] as a dishwasher at \$4.50 an hour from February 1985 to April 1987, and (3) Molina's Restaurant, 1114 S. Westmoreland, as a dishwasher/cook-helper at \$5.00 an hour from April 1987 to March 1990. As

evidence of his employment at those locales the applicant submitted sworn affidavits, all dated June 27, 1990, from (1) [REDACTED] owner of Dootch Motors, (2) [REDACTED] owner and manager of Restaurant Dos Amigos, and (3) [REDACTED] owner of Molina's Restaurant, who confirmed that the applicant worked at their businesses during the dates indicated between February 1982 and March 1990. Submitted along with the foregoing affidavits were another affidavit from the applicant's current (1990) employer, the Ramada Renaissance Hotel in Richardson, Texas, and affidavits from two Dallas residents who declared that they had known the applicant since November 1981.

In support of his LIFE application (Form I-485), filed in March 2002, the applicant submitted a new set of sworn affidavits concerning his U.S. employment and residence during the 1980s. They included:

- (1) An affidavit from [REDACTED] dated February 19, 2003, declaring that the applicant worked for him as a part-time cook assistant (Mondays, Wednesdays, and Fridays) from December 1981 to July 1982 in "Chito's" – the restaurant he used to own and manage at 4447 Maple Avenue in Dallas.
- (2) An affidavit from [REDACTED] dated February 3, 2003, declaring that the applicant worked for him from the summer of 1982 to July 1984 as a part-time yard man (every two weeks) at his home – [REDACTED] in Dallas – mowing the grass, cutting trees, cleaning the garage, etc.
- (3) An affidavit from [REDACTED] dated February 26, 2003, declaring that the applicant worked for him part-time as a maintenance man in a Jack-in the-Box franchise in Arlington, Texas from sometime in 1985 through 1987, doing a variety of jobs "from plumbing to carpentry, sheetrock and tile and cement."
- (4) An affidavit from [REDACTED] dated February 24, 2003, declaring (as he did in his original affidavit in 1990) that the applicant worked as a dishwasher in his Dallas restaurant, Dos Amigos, from 1985 to 1987.
- (5) Affidavits from five individuals residing in or near Dallas, dating from August to December 2002, three of whom declared that they had known and associated with the applicant since 1981 and the other two since 1986.

The district director did not analyze any of the individual affidavits submitted by the applicant with his I-687 form in 1990 or in support of his LIFE application in 2003. In her decision the district director referred to the affidavits submitted by the applicant as "unverifiable," which does not seem to be the case since every affiant, without fail, provided an address and phone number where they could be contacted. The only evidence in the record of any attempt to verify the affidavits are two printouts from the Texas Office of the Comptroller in August 2003 stating that it had not found any businesses with the name of Dootch Motors or Dos Amigos Restaurant. That printout postdated the 1990 affidavits by thirteen years, however, and the applicant's asserted employment at those businesses by some twenty years. It seems quite possible that Dootch Motors and Dos Amigos Restaurant were in operation during the 1980s, but had gone out of business sometime before 2003. There is no evidence that the district director attempted to verify any of the other affidavits submitted by the applicant. The AAO notes that the second set of affidavits contains information about three part-time jobs that were not mentioned by the applicant in his I-687 form in 1990. Though they overlap in time frame with the other positions listed on the I-687 form, it seems entirely possible that the applicant could have worked at those part-time jobs as well. There is nothing in the second set of affidavits that contradicts, or is irreconcilable with, the first set of affidavits.

Viewing the record in its entirety, and based on the foregoing discussion of the evidence, the AAO finds it more probable than not that the applicant entered the United States before January 1, 1982 and resided in the United States continuously and unlawfully from before January 1, 1982 through May 4, 1988. The AAO determines that the applicant has met his burden of proof, by a preponderance of the evidence, that he resided in the United States continuously in an unlawful status from before January 1, 1982 through May 4, 1988, as required under 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.12(e).

Accordingly, the applicant's appeal will be sustained. The district director shall continue the adjudication of the application for permanent resident status.

ORDER: The appeal is sustained.